HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO. 21567 OF 2006

Between:

Mohd. Wajid

..... Petitioner

AND

The Commissioner,
Municipal Corporation of Hyderabad,
Hyderabad & others

.....Respondents

:: O R D E R::

Counsel for the Petitioner : Shri G. Arun Kumar

Counsel for respondent No.1 : Shri G. Rama Rao

Dated: 18.10.2006

Per G.S.SINGHVI, CJ

In this petition filed on 11.10.2006, the petitioner has prayed for grant of a declaration that non-consideration of representation dated 25.09.2006 made by him for demolition of unauthorized structure made by respondent No.3 – Syed Abdul Ali Jaffar by encroaching the road adjacent to House No.16-8-206 situated at Kala Dera, New Malakpet, Hyderabad has resulted in violation of the principles of natural justice and Articles 14 and 21 of the Constitution of India.

We have heard learned counsel for the petitioner and Shri G. Rama Rao, Advocate representing Commissioner, Municipal Corporation of Hyderabad and are convinced that the relief in terms of the prayer made in the writ petition cannot be granted because,

(i) the petitioner has not impleaded the Municipal Corporation, Hyderabad as party respondent. The Commissioner, who has been impleaded as respondent No.1 and the Additional Commissioner, who has been impleaded as respondent No.2 are only functionaries of the Corporation and not the Corporation which has a jural personality and which can sue and be sued in its own name,

(ii) the petitioner has not produced any tangible evidence regarding the age of construction so as to enable the Court to record a finding that respondent No.3 has recently encroached on the public road and raised the

construction, and

(iii) the question whether the construction made by respondent No.3 amounts to an encroachment on the public road and whether he has raised construction without obtaining sanction from the competent authority can be properly adjudicated by a civil Court after giving opportunity to the parties to adduce oral and documentary evidence and there is no extraordinary reason for making a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner.

For the reasons stated above, the writ petition is dismissed leaving the petitioner free to avail remedy by filing civil suit.

As a sequel to dismissal of the writ petition, W.P.M.P.No.27358 of 2006 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

18.10.2006
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